



June 17, 2002

Mr. Lee Veness
Assistant County & District Attorney
Ellis County
1201 North Highway 77, Suite B
Waxahachie, Texas 75165-5140

OR2002-3257

Dear Mr. Veness:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164375.

The Ellis County and District Attorney's Office (the "county and district attorney") received a request for copies of information pertaining to two specified cases. You claim that the submitted information is excepted from disclosure pursuant to sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We note that the information at issue constitutes completed investigations made of, for, or by the county and district attorney. Thus, section 552.022(a)(1) of the Government Code provides that this information is not excepted from required disclosure under the Public Information Act, except as provided by section 552.108, or unless the information is expressly confidential under other law. *See* Gov't Code § 552.022(a). You claim that the information at issue is excepted from disclosure as attorney work product pursuant to section 552.108 of the Government Code. Section 552.108 provides in pertinent part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: . . . (4) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) [a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of 552.021 if: . . . (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108(a)(4), (b)(3), (c). A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply the explanation on its face, how and why section 552.108 applies to that information. *See* Gov't Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Company v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993, orig. proceeding), held that "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. Because the requestor in this instance seeks all the information contained within the county and district attorney's litigation file on case numbers 01-12174-CR and 01-11360-CR, we conclude that the county and district attorney may withhold most of the information from disclosure pursuant to section 552.108 of the Government Code as attorney work product.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we conclude that the county and district attorney must release all basic information contained within this information to the requestor. *See* Open Records Decision No. 127 (1976) (summarizing the types of basic information that must be made available to the public).¹

¹ We note that "basic information" may not generally be withheld from disclosure under section 552.103 of the Government Code. *See* Open Records Decision Nos. 597 (1991), 362 (1983).

In summary, with the exception of basic information, the county and district attorney may withhold the information from disclosure pursuant to section 552.108 of the Government Code as attorney work product.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald J. Bounds". The signature is fluid and cursive, with the first name "Ronald" being more prominent.

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 164375

Enc. Marked documents

cc: Mr. Ronald E. Bunch
Attorney at Law
P.O. Box 884
Waxahachie, Texas 75168
(w/o enclosures)